IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 44 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAGWATIPRASAD DOLATRAI MEHTA

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioners

PUBLIC PROSECUTOR for Respondent No. 1

MR AMIT J SHAH for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 09/10/2000

C.A.V. JUDGEMENT

1. By way of filing this petition under Article 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code, 1973 the petitioners pray for

appropriate writ, order or direction quashing and setting aside the impugned order dated 4.1.1999 at Annexure-D passed by the learned Special Judge and Additional Sessions Judge, City Civil and Sessions Court at Ahmedabad in Special Case No. 15 of 1990 under which an application of the petitioners was dismissed by the said Court. The petitioners contended in the said application that the F.I.R. against the petitioners was filed on 21.10.1988. That the petitioners were arrested and chargesheeted on 11.4.1990. That the charge was framed against the petitioners on 8.3.1994. That thereafter, several adjournments have been granted and several dates have been fixed and yet, proceedings and evidence did not start. That three orders were passed after framing of charge without any evidence and, therefore, the petitioners contended before the Trial Court that the evidence may be closed in the said matter in terms of decision of the Hon'ble Supreme Court in the case of Raj Deo Sharma Vs. The State of Bihar, reported in JT 1998 (7) SC 1. The matter was heard at length and the learned Special Judge has considered the arguments of the rival parties and found that this was not a case in which the evidence can be closed. Therefore, the learned Special Judge had dismissed the said application of the petitioners on 4.1.1999. Feeling aggrieved by the said judgement and order of the learned Special Judge, the petitioners have preferred this petition before this Court challenging the said judgement and order of the learned Special Judge with a prayer to close the evidence in the said matter.

2. The petitioners abovenamed have been facing the aforesaid prosecution along with other accused persons for offences punishable under the provisions of Prevention of Corruption Act. The facts are not very much in dispute. The learned advocate for the petitioners has argued at length that the matter requires consideration and learned Special Judge has not properly considered the aforesaid decision of Raj Deo Sharma (supra) and prays that the present petition be allowed and Court should direct the closure of the evidence in the aforesaid matter.

3. On receiving the petition, notice was issued and after hearing the other side, interim relief was granted by this Court on 4.8.1999 for staying further prosecution of the said Special Case No. 15 of 1990 pending against the petitioners. I have heard learned advocate for the petitioners and Mr. K.G.Sheth, leanred APP for State and have perused the papers.

4. In order to appreciate the arguments advanced by the learned advocates for the parties, it would be necessary to consider certain decisions of the Hon'ble Supreme court in different cases. The process can be said to have been started by decision rendered in the case of Abdul Rehman Antulay Vs. R.S.Nayak, reported in AIR 1992 SC 1701. There, the Hon'ble Supreme Court has considered the provisions contained under Article 21 of the Constitution of India with respect to the right of the accused person to have speedy trial for prompt disposal of the criminal case against him. The Hon'ble Supreme Court has found that in regard to speedy trial, some broad propositions can be laid down. Accordingly, the Hon'ble Supreme Court has laid down those propositions in par.54 of the judgement which can be reproduced for ready reference as follows :

(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the societal interest also, does not make it any-the-less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

(2) Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. That is how, this Court has understood this right and there is no reason to take a restricted view.

(3) The concerns underlying the Right to speedy trial from the point of view of the accused are :

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected too unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace,

resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

(4) At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, "delay is a known defence tactic". Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. Of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the Rights to speedy trial is alleged to have been infringed, the first question to be put and answered is - who is responsible for the delay ? Proceedings taken by either party in good faith, to vindicate their rights and interest, as perceived by them cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. it goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an appliction/petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not a frivolous. Very often these stays obtained on ex-parte representation.

(5) While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number of

accused and witnesses, the work-load of the court concerned, prevailing local conditions and so on - what is called, the systemic delays. It is true that it is the obligation of the State to ensue a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

(6) Each and every delay does not necessarily prejudice the accused. Some delay may indeed work to his advantage. however, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution be come persecution, again depends upon the facts of a given case.

(7) The 'demand' rule cannot be recognized or given effect to. An accused cannot try himself; he is tried by the Court at the behest of the prosecution. Hence, an accused's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a given case, he did make such a demand and yet he was not tried speedily, it would be a plus point in his favour, but the mere non-asking for a speedy trial cannot be put against the accused. Even in U.S.A., the relevance of demand rule has been substantially watered down in Barker and other succeeding cases.

(8) Ultimately, the Court has to balance and weigh the several relevant factors 'balance test' or 'balancing process' and determine in each case whether the right to speedy trial has been denied in a given case.

(9) Ordinarily speaking, where the Court comes to the conclusion that Right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed.

but this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the Court to make such other appropriate order - including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded - as may be deemed just and equitable in the circumstances of the case.

(10) It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of Right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the Court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of U.S.A. too has repeatedly refused to fix any such other time limit in spite of the Sixty Amendment. Nor it can be said that non-fixing any such outer limit ineffectuates the guarantee of Right to speedy trial.

(11) An objection based on denial of Right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis.

5. Then, the leaned advocate for the petitioners has relied upon another decision of the Hon'ble Supreme Court in the case of Common Cause, A Registered Society Vs. Union of India and Others, reported in (1996) 4 SCC 33.

There, the Hon'ble Supreme Court has considered that it would be necessary to issue guidelines for the speedy trial of criminal case and, therefore, the guidelines were issued by the Hon'ble Supreme Court in the said matter. The said guidelines can be found in para.4 of the said decision which can be reproduced for ready reference as follows :

1(a). Where the offences under IPC or any other law for the time being in force for which the accused are charged before any criminal court are punishable with imprisonment no exceeding three years with or without fine and if trials for such offences are pending for ne year or more and the accused concerned have not been released on bail but are in jail for a period of six months or more, the criminal court concerned shall release the accused on bail or on personal bond to be executed by the accused and subject to such conditions, if any, as may be found necessary, in the light of Section 347 of the Criminal Procedure Code (CrPC).

(b) Where the offences under IPC or any other law for the time being in force for which the accused are charged before any criminal court are punishable with imprisonment nor exceeding five years, with or without fine, and if the trials for such offences are pending for two years or more and the accused concerned have not been released on bail but are in jail for a period of six months or more, the criminal court concerned shall release the accused on bail or on personal bond to be executed by the accused and subject to the imposing of suitable conditions, if any, in the light of Section 437 CrPC.

(c) Where the offences under IPC or any other law for the time being in force for which the accused are charged before any criminal court are punishable with seven years or less, with or without fine, and if the trials for such offences are pending for two years or more and the accused concerned have not been released on bail but are in jail for a period of one years or more, the criminal court concerned shall release the accused on bail or on personal bond to be executed by the accused and subject to imposing of suitable conditions, if any, in the light of Section 437 CrPC.

2(a). Where criminal proceedings are pending regarding

traffic offences in any criminal court for more than two years on account of non-serving summons to the accused or for any other reason whatsoever, the court may discharge the accused and close the case.

(b) Where the cases pending in criminal courts for more than two years under IPC or any other law for the time being in force are compoundable with permission of the court and if in such cases trials have still not commenced, the criminal court shall, after hearing the public prosecutor and other parties represented before it or their advocates, discharge or acquit the accused, as the case may be, and close such cases.

(c) Where the cases pending in criminal courts under I.P.C. or any other law for the time being in force pertain to offences which are non-cognizable and bailable and if such pendency is for more than two years and if in such cases trials have still not commenced, the criminal court shall discharge or acquit the accused, as the case may be, and close such cases.

(d) Where the cases pending in criminal courts under I.P.C. or any other law for the time being in force are pending in connection with offences which are punishable with fine only and are not of recurring nature, and if such pendency is for more than one year and if in such cases trial have still not commenced, the criminal court shall discharge or acquit the accused, as the case may be, and close such cases.

(e) Where the cases pending in criminal courts under I.P.C. or any other law for the time being in force are punishable with imprisonment upto one year, with or without fine, and if such pendency is for more than one year and if in such cases trials have still not commenced, the criminal court shall discharge or acquit the accused, as the case may be, and close such cases.

(f) Where the cases pending in criminal courts under I.P.C. or any other law for the time being in force are punishable with imprisonment upto three years, with or without fine, and if such pendency is for more than two years and if in such cases trial have still not commenced, the criminal court shall discharge or acquit the accused, as

the case may be, and close such cases.

3. For the purpose of directions contained in clauses (1) and (2) above, the period of pendency of criminal cases shall be calculated from the date the accused are summoned to appear in the court.

4. Directions (1) and (2) made hereinabove shall not apply to cases of offences involving (a) corruption, misappropriation of public funds, cheating, whether under the Indian Penal Code, Prevention of Corruption Act or any other statute, (b) smuggling, foreign exchange violation and offences under the Narcotics Drugs and Psychotropic Substances Act, (c) Essential Commodities Act, Food Adulteration Act, Acts dealing with Environment or any other economic offences, (d) offences under Arms Act, Explosive Substances Act, Terrorists and Disruptive Activities Act, (e) offences relating to the Army, Navy and Air Force, (f) offences against public tranquility; (g) offences relating to public servants, (h) offences relating to coins and Government stamp, (i) offences relating to elections, (j) offences relating to giving false evidence and offences against public justice (k) any other type of offences against the State (1) offences under the Taxing enactments and (m) offences of defamation as defined in Section 499 I.P.C."

6. It is not much in dispute that these guidelines have been made applicable through out the State covering all criminal cases at all levels in the country though the matter was aimed at the State of Bihar only. Naturally there is no dispute about the same. Then comes the second judgement between the same parties i.e. Common Cause, a Registered Society through its Director Vs. Union of India, reported in (1996) 6 SCC 775. There, it is laid down that time limit mentioned in para.2(a) to 2(f) in the first case shall not apply to cases wherein the accused themselves are responsible for protraction of trials. Then expression "pendency of trial" in para 1(a) to 1 (c) and 'non-commencement of trial' in paras 2(b) to 2(f) have been explained and certain additional offences have also been enumerated in this decision to which directions of the Court in the said Common Cause case would not apply. This shows that this decision which clarifies certain situation and also

includes some exceptions in para.4 of the previous decision between the same parties. Therefore, it is not necessary to consider the same in detail. In the decision of Raj Deo Sharma Vs. State of Bihar, reported in (1998) 7 SCC 507 in which more guidelines have been issued, the same can be reproduced for ready reference as follows :

(i) Where the offence is punishable with imprisonment for a period not exceeding seven years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of a period of two years from the date of recording the plea of the accused on the charges framed whether the prosecution has examined all the witness or not within the said period and the court can proceed to the nest step provided by law for the trial of the case.

(ii) In such cases, if the accused has been in jail for a period of not less than on-half of the maximum period of punishment prescribed for the offence, the trial court shall release the accused on bail forthwith on such conditions as it deems fit.

(iii) If the offence under trial is punishable with imprisonment for a period exceeding 7 years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of three years from the date of recording the plea of the accused on the charge framed, whether the prosecution has examined all the witnesses or not within the said period and the court can proceed to the next step provided by law for the trial of the case, unless for very exceptional reasons to be recorded and in the interest of justice the court considered it necessary to grant further time to the prosecution to adduce evidence beyond the said time-limit.

(iv) But if the inability for completing the prosecution within the said period is attributable to the conduct of the accused in protracting the trial, the

time-limit for closing the prosecution evidence mentioned in the preceding clause would not apply.

Where the trial has been stayed by orders of the court or by operation of law, the period of such stay shall be excluded from the said period for closing the prosecution evidence. The above directions will be in addition, and without prejudice, to the directions issued by the Supreme Court in "Common Cause" A Registered Society Vs. Union of India[(1996) 4 SCC 33] as modified in "Common Cause" A Registered Society Vs. Union of India [(1996) 6 SCC 775].

Now, it is important to note that it has been clarified at the bottom of para-17 that above directions will be in addition and without prejudice to the direction issued by the Hon'ble Supreme Court in the case of Common Cause, A Registered Society Vs. Union of India, reported in (1996) 4 SCC 33 (supra). This shows that there supplementary provisions do not supersede and by-pass the earlier directions issued in the case of Common Cause referred to hereinabove.

7. Then there is again another decision between the same parties i.e. Raj Deo Sharma Vs. State of Bihar, reported in JT 1999(7) SC 317. Some clarifications are made in this judgement but again it does not supersede or overrule the first decision of Common Cause case referred to hereinabove.

8. We can also consider one more judgement rendered by the Division Bench of the Bombay High court in the case of I.P.Shankaran Vs. Dy. Superintendent of Police, Bombay and others, reported in 1999 Cri.L.J. 2194. This decision makes it clear that it has considered earlier decision of Common Cause (supra) as well as Raj Deo Sharma (supra) and on appreciation of the previous decision, the Division Bench of Bombay High Court was pleased to observe that the directions issued in the first Commons Cause case have not been overruled, dissented with or by-passed by subsequent decision of the Hon'ble Supreme Court. It would be relevant to consider that so far as the first Common Cause case is concerned, it has been positively mentioned in pra.4 of the said decision that said guidelines will not apply to the cases enumerated in para.4 of the said decision. Para.4 reproduced hereinabove makes it clear that it has been

positively mentioned therein that directions 1 and 2 in the said decision would not apply to the cases of offence involving corruption, misappropriation of public funds, cheating whether under the Indian Penal Code, Prevention of Corruption Act, 1974 or any other Statute. This shows that offence involving corruption would not be covered by those guidelines issued in para. 1 and 2 of the said decision. As stated above, the aforesaid guidelines have not been by-passed or overruled or cancelled or dissented by any other subsequent decision of the Hon'ble Supreme Court and this has been reiterated in the decision of the Bombay High Court referred to hereinabove. This would clearly mean that the guidelines with respect to closure of evidence and stoppage of prosecution would not apply to the cases enumerated in para.4 of the first Common Cause case. As said above, the said directions in para.4 clearly covers the case of corruption. In other words, the cases involving the offences punishable under the Prevention of Corruption Act would be covered by para.4 of the first Common Cause case and, therefore, in accordance with the said direction contained in para.4 of the first Common Cause case, it would be clear that the offences punishable under the provisions of Prevention of Corruption Act cannot be stopped by applying the guidelines of para. 1 and 2 of the first Common Cause case. Then second Common Cause case and subsequent cases of Raj Deo Sharma do not directly, specifically or by necessary implication by-pass or overrule the said guidelines, they do not say that the guidelines in para.4 have been cancelled or modified. It has been consistently said that these directions have been issued as supplementry and, therefore, they stand without prejudice to the earlier directions issued in the first Common Cause case. In that view of the matter, I am of the view that the guidelines issued in para.4 has not been superseded, by-passed or cancelled or overruled or modified by any subsequent decision of the Hon'ble Supreme Curt. On the contrary, the Hon'ble Supreme Court was very clear in observing that the subsequent guidelines were by way of supplementary step and, therefore, they did not supersede the earlier guidelines. They were issued without prejudice to the previous guidelines. Therefore, the interpretation is required to be undertaken accordingly and if so undertaken, it is clear that all the guidelines have to be read in consonance with one another.

9. In view of my reading of this decision, subsequent decision of the Hon'ble Supreme Court in second Common Cause case and second case of Raj Deo Sharma, guidelines issued in para.4 of the first Common

Cause case stand in full swings and so long as they stand as they are, it is not open to any court in India to close the evidence or stop the proceedings of criminal cases under the Prevention of Corruption Act. It would be clear that the Hon'ble Supreme Court had considered in the first Common Cause case that these are important and therefore evidence and proceedings cannot be stopped and be closed in such cases. The Hon'ble Supreme Court has also found that these are not the cases of trifle nature. There offences are against the society and public at large and therefore delay should not defeat justifice.

10. The learned advocate for the petitioner has also relied upon a decision of this court (Coram : Y.B.Bhatt,J) in Criminal Misc. Application No. 5034 of 1999 in which this court was pleased to direct that the prosecution evidence in Criminal Case No. 1153 of 1992 in the Court of learned Metropolitan Magistrate (Court no. 20), Ahmedabad be closed and the trial should thereafter proceed to the next stage. This was done in accordance with the guidelines issued in the aforesaid matter. There is no dispute about the same. However, it has to be considered that the said matter involved offences punishable under Section 506(2), 507 and 504 of the Indian Penal Code. This case fells under the categories mentioned in para. 1 and 2 of the first Common Cause case and, therefore, the Court was naturally inclined to pass appropriate order considering guidelines issued in the aforesaid matters. The same case did not fall within four corners of para.4 of the first Common Cause case and, therefore, the said decision will not apply to the facts of the case before me.

11. The Division Bench of the Bombay High Court after considering different decisions of the Hon'ble Supreme court which have been referred to hereinabove and after due consideration to the previous decision of the Hon'ble Supreme Court has laid down that in view of different approach adopted by the Hon'ble Supreme Court towards evidence under the Prevention of Corruption Act and other offence 1992 Cri.L.J. 2717 (SC) and 1996 Cri.L.J. 2380 (SC) and 1997 Cri. L.J. 1975 (SC), the directions made in 1998 Cri.L.J. 4596 (SC) cannot cover cases under the Prevention of Corruption Act. In the said matter also, the petition was filed under Article 226 of the Constitution of India seeking direction to quash the order dated 2.2.1999 passed by the learned Special Judge for C.B.I. Greater Bombay in Misc. Criminal Application No. 29 of 1999 for closure of evidence in Special Case No. 6 of 1999. There also the aforesaid decisions were required to be considered by the learned Special Judge

and after considering the said decision, the learned Special Judge found that evidence against the accused persons cannot be closed and, therefore, the accused persons/petitioners filed petition before the High Court. There, the High Court has observed in para 38 of the judgement that in view of the above legal position, it is clear to us that by closing the prosecution evidence and/or quashing the prosecution case, what is contemplated by the Apex Court in Antulay's case as was done in that case, is to give a direction for a speedy disposal of the trial on a day to day basis. Since we have reached the conclusion that the petitioner is not entitled to the benefit of direction (i) contained in para 16 of the decision in Raj Deo Sharma's case (1998 Cri.L.J. 4596(SC)), we are of the view that it is necessary in the interests of justice to direct the Special Court to take up the petitioner's case on a priority basis and dispose it of as expeditiously as possible. The Court further found that there was no error of law in the impugned order and, therefore, it calls for no interference in a petition under Article 226 of the Constitution of India.

12. We can refer to another decision of this Court (Coram : H.R.Shelat,J) in Criminal Misc. Application No. 876 of 1999. It has been argued by the learned advocate for the respondents that there also the concept of speedy trial was discussed at length but that was the matter relating to release of the accused on bail in offences punishable under Sections 302, 307 etc. There also, the learned Judge was required to consider the aforesaid decision of Raj Deo Sharma Vs. State of Bihar reported in JT 1998 (7) SC 1 with respect to speedy trial and with respect to directions issued by the Hon'ble Supreme Court for sppedy trial of the offenders. There, the learned Judge did not agree with the contention of the original accused persons that he should be enlarged on bail. This was in accordance with the directions issued in the first Common Cause case.

Any way, here it is a case wherein the petitioner is involved in offence punishable under the Prevention of Corruption Act and consequently it was not open to the learned Special Judge to close the evidence on the ground of delay. The said order of the learned Special Judge is quite in consonance with the guidelines issued by the Hon'ble Supreme Court in the Antuley's case, Commons Causes cases as well as in Raj Deo Sharma's cases. Therefore, it cannot be said that the said order suffers from illegality. The learned advocate for the petitioners has argued at length that one of the accused

person had died and others are also aged persons and they is staying in Surendranagar District, he has to rush down for attending the trial Court at Ahmedabad. That there were more than 100 adjournments and the prosecution has delayed the commencement of trial and therefor the prosecution is not entitled to continue the prosecution against the petitioners. The details are given at page-51 to the petition showing presence and absence of both the sides. Now, this may be necessary only when it is permissible for the Court to close the evidence. Since closure of evidence is impermissible in the case of Prevention of Corruption Act I am of the view that the above stated factual aspect cannot be considered for any purpose. Personal difficulty of the petitioner cannot be looked into. The distance between Surendranagar and Ahmedabad which is stated to be round about 100 k.m. can not be a relevant consideration. Death of one of the accused also cannot be considered. The fact remains that in view of the guidelines issued in para.4 of the first Common Cause case, closure of evidence of the prosecution is impermissible in case involving the offence punishable under provisions of Prevention of Corruption Act. The petitioners face the said offence under the Prevention of Corruption Act and, therefore, in accordance with the guidelines issued in para.4 of the first Common Cause case it would not be permissible for the Court to close the evidence of the prosecution. The learned Special Judge has not closed the evidence of the prosecution considering para.4 of the first Common Cause case. Consequently, the said order cannot be treated to be illegal for any moment and, therefore, the same cannot be quashed and set aside.

13. The result is that the petition is required to be dismissed and at the same time, direction is required to be issued to the learned Special Judge to see that the matter is fixed very soon preferably in the month of October/November,2000 and to fix and try the same on day to day basis till the trial is concluded. At the same time, it is also required to be considered here that in a case where the trial is in Sessions Court or in Special Court, the original complainant is totally behind curtain. The State is universal prosecutor in Sessions court. The original complainant is named and as an informant or as one of the witness for the prosecution. He has no voice in the conduct of trial. We cannot speak in between. He can engage an advocate who can render assistance to the public prosecutor but he cannot conduct the trial as of right, though the entire machinery may have been put to motion by him. He is the person who claim to have suffered. In the present case, it is not

the case of either side that this informant sitting behind the curtian and awaiting his turn was guilty of delay. Nobody would think of him as to why he should lbe penalized for no fault of him.

In the present case we find that the original informant has been totally forgotten. It is nobody's case that the informant was summoned and did not appear. It is nobody's case that summons was sent to him, he avoided service of summons and also avoided attending the Court. Therefore, while examining the provisions of Article 21 of the Constitution of India with respect to right of the accused persons to have speedy trial irrespective of fact as to whether or not accused is in jail, a time has come where the Courts may be required to consider the right of the original complainant/informant to have a speedy trial. Because of lapse of time there is lapse in memory, sometimes the witnesses may not be available, some witnesses may not be alive on the date of commencement of the trial. The witnesses might migrate to other area or they may go abroad and at the time of trial, may not be available. In some cases, there would be chances of winning over witnesses after long lapse of time. Sometimes, the witnesses develope sympathy towards accused persons because of passage of time. Therefore, speedy trial is a right of the accused under Article 21 of the Constitution of India. At the same time, it is also in the interest of the original complainant who is simply cited as witness or informant, who has moved machinery into motion and who is victim of the offence said to have committed by the accused person. However, the law and the Constitution have taken care to see that there is a fair trial against the accused persons and therefore the trial should be only in the safe hands of the disinterested public prosecutors. Any way, there appears no fault on the part of the present informant in the present case to any extent and there is no allegation to that aspect also even during the course of the lengthy arguments advanced by the learned advocate for the petitioners. However, considering the guidelines issued in para.4 of the first Common Cause case, it is not necessary to consider this aspect of the case. Nowhere the said guidelines provide that the guidelines with respect to closure of evidence would apply to the case under the Prevention of Corruption Act. The present case against the petitioner is one under the Prevention of Corruption Act wherein the evidence could not have been closed and learned Special Judge has committed no illegality in refusing the closure of evidence of prosecution. Therefore, no illegality has been exhibited which is a subject matter in the order of leaned Special

Judge in the present petition and, therefore, the peittion deserves to be dismissed.

14. Therefore, the present petition is ordered to be dismissed and notice is ordered to be discharged. The learned Special Judge, however, is directed to fix the matter for hearing as early as possible, preferably in the month of October/November,2000 and to see that the matter is heard and trial is conducted on day to day basis as far as possible till the trial is finally concluded. With these directions, this petition is ordered to be dismissed and notice is discharged. The R & P shall be sent back immediately.

(D.P.Buch,J)

(vipul)

(PTO)

FURTHER ORDER

After pronouncement of the aforesaid judgement, the learned advocate for the petitioner states that the petitioner would like to prefer appropriate proceedings before the higher forum. Therefore, he seeks time and also prays that interim relief granted earlier may be continued for a period 6 weeks from today. Therefore, interim relief granted earlier shall be continued for a period of 6 weeks from today. Intimation to the Trial Court. Direct service is permitted.

(D.P.Buch,J)
(vipul)